CRIMINAL APPEAL.

Before Mr. Justice Mitter and Mr. Justice Macpherson.

1888 December 18.

MADHUB CHUNDER MOZUMDAR v. NOVODEEP CHUNDER PUNDIT.*

Penal Code (Act XLV of 1860), s. 210—Civil Procedure Code (Act XIV of 1882), s. 258—Satisfaction of decree—Execution of decree—Fraudulently executing decree after it has been satisfied when satisfaction has not been certified to Court.

A decree-holder having proceeded to execute his decree against his judgment-debtor, the latter objected, stating that the decree had been already satisfied, although the adjustment thereof had not been certified to the Court as required by s. 258 of the Code of Civil Procedure. The judgment-debtor, being under the circumstances compelled to deposit the amount of the decree in Court, applied for and obtained sanction to prosecute the decree-holder for an offence under s. 210 of the Penal Code. It was contended that the case did not fall within that section, as the satisfaction, not having been certified to the Court, could not be recognised by the Court executing the decree, and that consequently no offence had been committed.

Held, that the words "after it has been satisfied," used in s. 210 of the Penal Code, indicate only the *fact* of the satisfaction of the decree. The fact that the satisfaction is of such a nature that the Court executing the decree could not recognise it, does not prevent the decree-holder from being properly convicted of an offence under that section.

THIS was an appeal from the order of a Deputy Magistrate convicting the appellant and sentencing him to rigorous imprisonment and a fine, which came on to be heard by the High Court under the circumstances stated in the preceding case—[*In the matter of Madhub Chunder Mozumdar*, petitioner (1)].

The facts of the case are fully stated in the report of that case.

Mr. *M. Ghose* and Baboo *Kashi Kant Sen*, for the appellant.

Mr. *Kilby* for the Crown, appeared in support of the conviction.

* Criminal Appeal No. 852 of 1888, against the order passed by D. Cameron, Esq., Sessions Judge of Tipperah, dated the 31st of August, 1888, affirming the order passed by Baboo Bugola P. Mozumdar, Deputy Magistrate of Chaundpore, dated the 8th of August 1888.

(1) *Ante*, p. 121.

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MADHUB CHUNDER MOZUMDAR v. NOVODEEP CHUNDER PUNDIT.

The judgment of the High Court (MITTER and MACPHERSON, JJ.) was as follows:—

The evidence has been placed before us, and we think that the conclusion to which the lower Court has come on that evidence is right. As regards the question of law which has been argued, *viz.*, that the present case does not come within the purview of s. 210 of the Indian Penal Code, because the satisfaction of the decree was of such a nature as could not be recognized by the Court executing the decree, we do not think that that contention is valid. The words of the section are: "Whoever fraudulently causes a decree to be executed against any person after it has been satisfied, &c." The words "after it has been satisfied" indicate, in our opinion, the fact of its satisfaction. Merely because the satisfaction is of such a nature that the Court executing the decree could not recognise it would not take the case out of the purview of the section. We therefore dismiss this appeal.

H. T. H. *Appeal dismissed.*

APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Beverley.

GUR BUKSH ROY *alias* GUR BUKSH SINGH (PLAINTIFF) *v.* JEOLAL ROY AND OTHERS (DEFENDANTS).*

1888 *December* 20.

Right of occupancy—Purchase by tenant of fractional share of proprietary interest, Effect of, on acquisition of right of occupancy—Beng. Act VIII of 1869, *s.* 6.

A tenant, who had commenced to occupy his holding on the 13th April 1871, acquired by purchase in the year 1878 a fractional share of the proprietary interest, and continued to occupy the holding as ryot till the 13th May 1885, when he was dispossessed. On the 30th March 1886 he instituted a suit to recover possession, alleging that he had acquired a right of occupancy. It was contended that owing to the purchase of the share of the proprietary interest he could not have acquired such right.

Held, that under Beng. Act VIII of 1869 there was nothing to prevent such right being acquired by the plaintiff if after his purchase he continued

* Appeal from Appellate Decree No. 1062 of 1888, against the decree of Baboo Upendro Chunder Mullick, Subordinate Judge of Bhaugulpore, dated the 24th of March 1888, affirming the decree of Baboo Bemola Churn Mozumdar, Munsiff of Beguserai, dated the 22nd of December 1886.